



442

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Eugene Brady
County Attorney
Kent County
Greenville, Texas

Dear Sir:

Opinion No. C-3303

Re: Is the contract between
the City of Greenville and
the depository for school
funds of Greenville Inde-
pendent School District
void where one of the stock-
holders and directors in
such depository is a member
of the school board, and
related questions?

Your recent request for an opinion of this department
on the questions herein stated has been received.

We quote from your letter as follows:

"Certain related questions of law have
arisen in connection with the membership of
a school trustee now serving upon the Board
of Education of Greenville Independent School
District in Greenville, Texas. My committee
has a vital concern in these questions.
Therefore, I am requesting your opinion there-
on.

"1. Is the contract between the City of
Greenville and the depository for school funds
of Greenville Independent School District
void where one of the stockholders and direc-
tors in such depository is a member of the
school board?

"2. Where a bank is the depository for
all funds of the city of Greenville, including

Honorable Eugene Brady, Page 2

school funds, is it proper and legal for a stockholder and director in such bank to serve as a member of the school board?

"3. Is a trustee of the Greenville Independent School District subject to removal by the City Council if he is a director and stockholder in a bank which is a depository for the school funds?

"The above questions really, in my mind, are but parts of one question, but I have expressed it as above for clarity. It seems to me that they boil down to the question:

"Can the City Council of the City of Greenville contract with itself? Clearly the Board of Education is the creature of the Council. Where is the difference in the Council contracting with itself or with its creature?

"Our city was granted a special charter in 1907. For your information set-forth below you will find all provisions of that charter, as amended, relating to schools:

"Article 11, Sec. 16, Schools--The City of Greenville an Independent School District.--The City of Greenville shall constitute an independent school district, subject to the general school laws of the State, except where in conflict with this act, and the city shall have authority to levy and collect taxes and appropriate funds for the support and maintenance of the public schools within its limits.

"(a) Trustees.--How Appointed, Terms of Office, Etc.--The trustees to constitute a school board to the city shall hereafter be appointed by the Council, but the trustees now in office shall continue to serve until the expiration of their respective terms, and all vacancies caused by death, resignation, or other cause, shall be filled by

Honorable Eugene Brady, Page 3.

appointment in the same manner for the unexpired term. The regular term of members of the school board shall be two years, and the regular appointment of members shall be made at the first meeting of the Council in May of each year, or as soon thereafter as practicable, and the necessary number of trustees shall be appointed to take the place of those whose terms have expired. The City Council of said city of Greenville shall annually levy and assess the special tax for the support of the public schools in that city that has heretofore been or may be hereafter voted for that purpose by the qualified voters in the city of Greenville, by an ordinance duly passed by said City Council upon the requisition of the board of trustees of the public schools of the city of Greenville, said tax to be levied and assessed in the same manner as is required by this act in the levy and assessment of taxes for general purposes.

"Custodian School Fund.--The custodian of other city funds, as provided in this act, shall be the custodian of all public school funds, upon the same terms and conditions as other funds, and his bond shall cover said school funds.

"(c) How Funds Paid Out.--No school funds shall be paid out except upon pay rolls or warrants signed by the president of the school board and countersigned by the secretary of said board of trustees.

"(d) Financial Statements.--It shall be the duty of the school board to make such financial statements or reports as may be requested by the city council, and the council may make or cause to be made all such investigation as to the expenditure of funds or the conduct of the schools as either may deem proper.

"(e) Trustees not to receive Compensation.--No member of the school board shall

Honorable Eugene Brady, Page 4

receive any compensation for his services in any capacity whatever, nor be interested directly or indirectly in any contract with or claim of demand of any character against, the school board of the city of Greenville. Any such contract, claim or demand shall be void, any member of said board who shall become interested in any such contract, claim, or demand, or shall buy or sell any school warrants or obligations of said board, and shall have any interest in any claim or obligations of said school board, shall be subject to removal by the City Council.'

"Article IX. Sec. 1. Office of Treasurer to be let by Contract--The office of the city treasurer shall, instead of being appointed by the City Council, as heretofore, be let by contract to the highest and best bidder in the discretion of the City Council. The City Council shall, not less than thirty days prior to the expiration of the term of office of the present city treasurer, and every two years thereafter, advertise for bids for the said office, stating what said bids shall specify and the terms on which such bids shall be received, and shall appoint a city treasurer at its meeting on April 10, 1907, or as soon thereafter as practicable. Any treasurer appointed by the contract shall nevertheless be an officer of the city and subject to the same duties as a treasurer otherwise elected.

"Said treasurer shall execute a bond payable to the city, to be approved by the City Council, and filed with the City Clerk, with not less than three solvent sureties, who shall own unincumbered real estate in Hunt County of as great a value as the amount of said bond or said treasurer may make said bond in some approved fidelity as surety company, penalty of said bond to be at least double the total revenue of the city for the preceding fiscal year and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said treasurer, and for the pay-

Honorable Eugene Brady, Page 3

ment upon presentation of all checks drawn upon said depository by the said clerk and secretary of the board of education, whenever any fund shall be in said treasury applicable to the payment of said check, and that the funds of the city shall be faithfully kept by the said treasurer, and with the interest thereon accounted for according to law.'

"He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon an order by the city, and make all payments for the same upon an order by the mayor, and attested by the clerk and the seal of the corporation, except the payment into the school fund shall be upon the order of the board of education and attested by the secretary of said board; provided, that no order shall be paid unless it shows upon its face that the City Council and Board of Education, as the case may be, has ordered its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the City Council at their first regular meeting in every month, and at such other times as the Council may require. He shall perform such other acts and duties as the Council may require, and receive for his services \$5.00 per annum; provided that the City Clerk shall be ex-officio city treasurer until the City Council shall select a City Treasurer in accordance with the provisions of the article.

"As you will note from the charter provisions noted above the personnel of the Board of Education is appointed by the City Council. Also, that all funds withdrawn for the school funds in the depository are taken out on the order of the school board."

In opinion No. 0-2356, this department, under the facts stated in the inquiry requesting said opinion, held that:

Honorable Eugene Brady, Page 6

"In conclusion, we beg to advise you that in our opinion (1) the contract made by the Board of Trustees of the Trinity Independent School District designating as depository the bank, three of whose directors are trustees, is void; (2) the trustees are not subject to criminal prosecution under Article 373 of the Penal Code; (3) upon necessary findings of fact by a court or jury, the trustees may be removed from office by the procedure provided by Article 5, Section 24 of the Constitution of Texas, and Title 100, Revised Civil Statutes, 1925."

The above mentioned opinion quotes in full Conference Opinion No. 2785 of this department, dated September 16, 1929, appearing on page 127 of the Attorney General's published reports for 1923-1930, which holds: "that a stockholder or officer of a corporation acting as a depository for an independent school district would not be eligible for appointment or election as trustee of said school district." We are enclosing a copy of opinion No. 0-2656 for your information.

We do not think that the two opinions mentioned above are applicable to the questions under consideration, as the facts relative to those opinions are not analogous to the facts presented in your inquiry. It will be noted that in the two opinions, mentioned above, it was the duty of the school board to select the depository for the school funds. However, in the situation presented in your inquiry, there is no duty imposed upon the school board to select the depository for the school funds, but on the contrary, the City Council selects the depository for all city funds, including all public school funds, and the school trustees are appointed by the City Council, all of which is shown by certain provisions of the city's charter quoted above. As we understand the facts and the provisions of the city's charter, there is no contract between the school board and the city depository which is also the depository for the school funds. We do not think that the question of the City Council of the city of Greenville contracting with itself is presented in the inquiry. Neither do we think that the situation of the City Council contracting with itself or with its creature is presented. With reference to the term "its creature" we assume that you refer to the school board which is appointed by the City Council.

Honorable Eugene Brady, Page 7

It appears to us, under the facts stated, that the City Council contracts with the city depository which is no part of the City Council or no part of the school board except that a member of the school board is also a stockholder and director in the city depository.

In view of the foregoing facts and the provisions of the charter quoted above, the three questions as stated above are respectfully answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 15, 1941

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FIRST ASSISTANT
ATTORNEY GENERAL

By

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AT:CO

